

Message

From: Milbourn, Cathy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=235D8027F05546DBA9897972F0B78419-CMILBOUR]
Sent: 2/8/2022 2:53:16 PM
To: Johnathan Hettinger [jhettinger@investigatemidwest.org]
CC: Daguiard, Robert [Daguiard.Robert@epa.gov]; EPA Press Office [Press@epa.gov]
Subject: RE: ESA and pesticides - Investigate Midwest

Good Morning Johnathan,

Here's our response on background. Please let me know if you have additional questions.

Cathy

-What made the EPA make the decision now about the ESA changes?

EPA and other federal agencies have recently reaffirmed—through the Interagency Working Group—their commitment to working together and with stakeholders to improve the Endangered Species Act (ESA) pesticide consultation process. Under the ESA, EPA must ensure that Agency actions are not likely to result in jeopardy or adverse modification of designated critical habitat for species federally listed as endangered or threatened (listed species). In general, this obligation applies to most EPA pesticide actions, including registering new active ingredients. The Endangered Species Act protection policy for new pesticides is one part of EPA's recommitment to meeting these ESA obligations.

EPA has also increasingly faced litigation on registrations of new active ingredients issued without adequate compliance with the ESA. EPA believes that improving ESA compliance in this area will protect listed species and help redirect EPA's resources away from defending new registration decisions and towards a systematic approach that helps ensure all new AIs are equally defensible and avoids undue effects on listed species.

- Is the Enlist decision related at all or a preview of what to expect with new registrations?

For all new conventional pesticide active ingredients (AIs), EPA will evaluate the potential effects of the AI on listed species, and their designated critical habitats, and initiate ESA consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, as appropriate. While Enlist Duo and Enlist One are not new products, as they were previously registered in 2014 and 2017, EPA followed a similar process as EPA envisions for new AIs when making its registration decision for Enlist One and Enlist Duo: the Agency evaluated the potential effects of these products on listed species, and their designated critical habitats, considered the likelihood that the action may jeopardize the continued existence of listed species or adversely modify their designated critical habitat, included mitigations to address any such findings, and initiated ESA consultation with the U.S. Fish and Wildlife Service. It has been EPA's longstanding practice to determine the potential effects on listed species and their designated critical habitats when deciding whether to register a new use for a pesticide, or a product, like Enlist, that will be used on genetically modified crops.

- Is there an updated schedule for reviewing current pesticides?

EPA is working to implement early protections for listed species prior to consultation with the Services for a subset of registered pesticides that are being considered in registration review. The Agency is also exploring ways to develop practical mitigations for a subset of vulnerable listed species to be applied to pesticides undergoing registration review. EPA's upcoming ESA-FIFRA workplan will provide more details on these measures.

- Do you have any update on chlorpyrifos, diazinon and malathion?

In December 2017, the National Marine Fisheries Service (NMFS) issued a final biological opinion for malathion, chlorpyrifos, and diazinon. In 2019, EPA requested to reinstate formal consultation on these pesticide products to consider new information that was not available when NMFS issued its final biological opinion. As a result of this reinstated consultation, NMFS will release a draft revised biological opinion for chlorpyrifos, diazinon and malathion. EPA will post and request public comment on this draft biological opinion upon receiving it from NMFS in the coming weeks. For more information on the 2017 biological opinion, see docket [EPA-HQ-OPP-2018-0141](#) at www.regulations.gov.

In April 2021, EPA solicited public comment on the Fish and Wildlife Service's (FWS) draft biological opinion for the registration of malathion. For more information on this draft biological opinion, see docket [EPA-HQ-OPP-2021-0231](#) at www.regulations.gov. EPA expects to publish FWS's final biological opinion for malathion in the coming weeks.

From: Johnathan Hettinger <jhettinger@investigatemitwest.org>

Sent: Tuesday, February 1, 2022 5:10 PM

To: Milbourn, Cathy <Milbourn.Cathy@epa.gov>

Cc: Daguillard, Robert <Daguillard.Robert@epa.gov>; EPA Press Office <Press@epa.gov>

Subject: Re: ESA and pesticides - Investigate Midwest

Both are for Investigate Midwest, a nonprofit newsroom, but they're likely to have different co-publishing partners.

The Seresto one is for USA Today.

The ESA one may be copublished by our other partners, such as the St. Louis Post-Dispatch, Civil Eats, The Counter or In These Times.

On Tue, Feb 1, 2022 at 3:05 PM Milbourn, Cathy <Milbourn.Cathy@epa.gov> wrote:

Hi Johnathan,

I have your inquiry—you are working on two stories for different publications, correct?

Thanks,

Cathy

From: Johnathan Hettinger <jhettinger@investigatemitwest.org>

Sent: Tuesday, February 1, 2022 4:44 PM

To: Milbourn, Cathy <Milbourn.Cathy@epa.gov>; Daguillard, Robert <Daguillard.Robert@epa.gov>; EPA Press Office <Press@epa.gov>

Subject: ESA and pesticides - Investigate Midwest

Hello,

I'm a reporter with Investigate Midwest, and I'm working on a story about the recent EPA announcement about the Endangered Species Act. I would love to do an interview with Jake Li, if possible.

I was wondering:

- What made the EPA make the decision now about the ESA changes?
- Is the Enlist decision related at all or a preview of what to expect with new registrations?
- Is there an updated schedule for reviewing current pesticides?
- Do you have any update on chlorpyrifos, diazinon and malathion?
- Is there anything else people need to know about this?

My deadline is Monday, Feb. 7.

Thanks,

Johnathan Hettinger

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